

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of BRIAN CHARLES
SNYDER, Deceased.

JOSEPHINE SNYDER, as Personal Representative
of the Estate of BRIAN CHARLES SNYDER,

Petitioner-Appellee,

v

JEANNE M. SNYDER,

Respondent-Appellant.

In the Matter of the Estate of BRIAN CHARLES
SNYDER, Deceased.

JEANNE M. SNYDER,

Petitioner-Appellant,

v

JOSEPHINE SNYDER, as Personal Representative
of the Estate of BRIAN CHARLES SNYDER,

Respondent-Appellee.

UNPUBLISHED
January 28, 2000

No. 215139
Oakland Probate Court
LC No. 98-264487 SE

No. 216019
Oakland Probate Court
LC No. 98-264487 SE

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

Appellant appeals as of right from two orders of the Oakland County Probate Court. The first order vacated appellant's appointment as temporary personal representative of decedent's estate and appointed appellee as personal representative. The second order determined that appellee, as decedent's widow, is an heir. The two appeals were consolidated by this Court. We affirm.

Decedent died intestate on July 26, 1998. Appellant, who is decedent's mother, filed a petition to commence proceedings and was appointed temporary personal representative. Appellee, claiming to be decedent's widow, petitioned the probate court to vacate appellant's appointment, and to appoint appellee as personal representative. Prior to the hearing on appellee's petition regarding the appointment of a personal representative, appellant petitioned the court for a determination of decedent's heirs. Following a hearing on appellee's petitions, the probate court vacated appellant's appointment as temporary personal representative and appointed appellee as personal representative of decedent's estate. In its order determining heirs, the probate court found that appellee was decedent's widow.

It is undisputed that appellee married decedent in Nevada after his consent divorce from his first wife was placed on the record, but before the judgment was entered. The judgment of divorce, entered a month after the Nevada marriage, states that the marriage was "dissolved nunc pro tunc as of February 9, 1988 [the day the divorce was placed on the record]."

Appellant asserts that the Michigan *nunc pro tunc* judgment of divorce cannot validate a Nevada marriage that was void under the laws of that state when entered into. We disagree. Conflicts of law questions are reviewed de novo. *Burney v P V Holding Corp (On Remand)*, 218 Mich App 167, 171; 553 NW2d 657 (1996). Michigan law applies in conflicts of law cases unless there is a rational reason to apply the law of another forum. *Sutherland v Kennington Truck*, 454 Mich 274, 286; 562 NW2d 466 (1997); *Burney, supra*, 218 Mich App 172. If another forum has an interest in having its law applied to the case, this Court must determine whether "Michigan's interests mandate that Michigan law be applied, despite the foreign interests." *Sutherland, supra*, 454 Mich 286; *Burney, supra*, 218 Mich App 172-173.

Balancing Michigan's interests in having Michigan law applied against Nevada's interests in having Nevada law applied, we conclude that Michigan's interests predominate. The divorce between decedent and his first wife was granted by a Michigan court; appellee and decedent resided in Michigan following the Nevada marriage ceremony; and decedent's estate is located in Michigan and the appointment of a personal representative was ordered by the probate court in conformity with the laws of Michigan. Further, it is not clear that Nevada would declare the marriage void under the circumstances presented. The case cited by appellant, *Villalobos v Bowen*, 273 P2d 400 (1954), is distinguishable on its facts, and did not involve a nunc pro tunc judgment of divorce.¹

Appellant argues that the probate court erred in vacating her appointment as temporary personal representative and appointing appellee as personal representative of decedent's estate. We disagree.

The probate court found that appellee and decedent were validly married based on the inclusion of the *nunc pro tunc* provision in the divorce judgment between decedent and his first wife. A judgment *nunc pro tunc* "is usually used where 'a divorce decree has actually been made or rendered previously or the successful party is otherwise entitled to such a decree, but entry of the decree has been omitted or delayed through inadvertence or mistake, or the decree has otherwise not been properly entered'." *Vioglavich v Vioglavich*, 113 Mich App 376, 384; 317 NW2d 633 (1982), quoting 19 ALR3d 648, 652. Even though a second marriage occurs while one party is still married to another, the second marriage will be validated by a *nunc pro tunc* judgment of divorce. *Id.* Relying on *Vioglavich*, the probate court reasoned that the inclusion of the *nunc pro tunc* provision in the divorce judgment between decedent and his first wife had a retroactive effect that validated appellee's marriage to decedent. We agree.

We also find no error in the court's appointment of appellee as personal representative. This Court has held that "MCL 700.116(1)(a)²; MSA 27.5116(1)(a) creates priority in the surviving spouse amongst all other relatives who wish to be appointed personal representative of the estate of an intestate decedent." *In re Estate of Hutton*, 191 Mich App 292, 294; 477 NW2d 144 (1991). In light of the probate court's decision that appellee was the spouse of decedent, the order appointing appellee as personal representative was in accordance with MCL 700.116(1)(a); MSA 27.5116(1)(a).

Appellant additionally contends that notwithstanding the statutory provision, the court erred in appointing appellee personal representative because appellee is unsuitable to act in that capacity. Appellant correctly observes that case law has established that the statutory priority is not absolute, and that if the surviving spouse is incompetent or unsuitable, another appropriate heir may be appointed personal representative. *Hutton*, 191 Mich App at 294. The probate court did not abuse its discretion in concluding that appellant failed to sustain her burden of establishing appellee's unsuitability, given appellee's continued marriage to decedent, and the absence of special factors such as those present in *Hutton*.

Defendant's final argument is that the probate court erred in its determination that appellee was decedent's widow and heir. The premise of this argument is that the Nevada marriage was void and could not be validated by the *nunc pro tunc* provision in the judgment of divorce. Because we reject this argument and conclude that the probate court did not err in concluding that the Nevada marriage was valid, we conclude that the court did not err in declaring appellee an heir as the surviving spouse.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Michael J. Talbot

¹ We observe that Michigan has a statute similar to Nevada's statute regarding void marriages. MCL 552.1; MSA 25.81. Nevertheless, in Michigan, in appropriate circumstances, a nunc pro tunc provision of a judgment of divorce will be given effect, and the judgment will be deemed to have been effective before a marriage performed in the interim between the date of effect under the nunc pro tunc provision and the date the judgment was actually entered. *Vioglavich v Vioglavich*, 113 Mich App 376, 384-387; 317 NW2d 633 (1982).

² The pertinent portion of MCL 700.116(1); MSA 27.5116(1) states:

Administration of the estate of an intestate decedent shall be granted to any of the following persons who qualify under [MCL 700.531; MSA 27.5531] and who are respectively entitled to be appointed as personal representative in the following order:

(a) To the surviving spouse, or to a person whose appointment is requested by the surviving spouse.

(b) To an heir of the decedent by degree of kinship, or to a person whose appointment is requested by an heir.

(c) If the surviving spouse, heirs, or the person selected by any of them shall be incompetent or unsuitable, or if such persons do not petition for administration for 30 days after the death of the decedent, administration may be granted to another interested person or to the public administrator of the proper county as the court considers proper.

MCL 700.531; MSA 27.5531 deals with service of process, personal jurisdiction, and nonresident fiduciaries.